

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2955 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

AP PANDYA

Versus

STATE OF GUJARAT

Appearance:

NOTICE UNSERVED for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/06/1999

ORAL JUDGEMENT

At the relevant time when the petition was filed in the year 1980, petitioner Dr A.P. Pandya was serving as an Entomologist at the Government Medical College, Surat. The petitioner joined as an Entomologist at the aforesaid college as per appointment order dated 23-2-1972 (Annexure "A"). By communication dated 27/28-7-1972 (Annexure "B"), the Professor of Preventive and Social Medicine had informed the Dean of the

Government Medical College about the duties of Entomologist as under :-

- "a) To take practicals, demonstrations and lectures for undergraduate students in medical Entomology.
- b) To assist the professor in training of Post Graduates (M.D., D.P.H. etc.) and interneers in Medical Entomology.
- c) To design and carry out research projects in Medical Entomology."

According to the petitioner, the post of Entomologist in a Government Medical College was a teaching post and teaching program was also being prepared accordingly as per Annexure "E" to the petition. Accordingly, the petitioner had availed of summer and winter vacations in the years 1978, 1979 and the summer vacation in the year 1980. However, by order dated 24-4-1980 (Annexure "G") the Deputy Director of Medical Education informed the Dean of Government Medical College, Surat that the Government had decided that the post of Entomologist cannot be regarded as a teaching post for the benefit of vacation. On the basis of the said decision, the Dean of the Medical College sent the impugned communication dated 27/29-9-80 (Annexure "H") calling upon the petitioner to submit leave reports for the relevant weeks in the years 1978, 1979 and 1980 during which the petitioner had availed of the vacation.

2. The petition was filed in the year 1980 through learned advocate Mr NJ Mehta, who unfortunately expired in the year 1988. The attempts made by the office to serve the petitioner by ordinary process as well as by registered post A.D. have failed. The notice issued by RPAD has been returned unserved with the remark of the postal authority "Left". The ordinary process was also received back unserved with the bailiff's remarks that as per the information given by the authority of the Government Medical College, Surat, the petitioner has left the college since last 10 years and he has been serving in the office of the Regional Director, Health and Family Welfare at Bapunagar, Ahmedabad.

3. Ordinarily, the Court would have waited for the notice to be served on the petitioner, but in the peculiar facts and circumstances of the case, the Court does not adopt that course of action as the petitioner is no longer an Entomologist and, therefore, the controversy

whether the petitioner is entitled to vacation has now become academic. The petitioner appears to have ceased to be an Entomologist since last more than 10 years. No useful purpose will be served at this stage by deciding this controversy as far as the petitioner is concerned. The petition was filed in the individual capacity of Dr A.P. Pandya and not on behalf of the persons working in the cadre of Entomologists. Hence, the Court proposes to dispose of the petition as infructuous.

4. It is true that by impugned order at Annexure "H" the Dean of the Government Medical College, Surat had called upon the petitioner to submit leave reports for the concerned weeks during which the petitioner had availed of summer and winter vacations. However, the vacations were availed of by the petitioner in the years 1978, 1979 and 1980. That direction was stayed during pendency of this petition. Thereafter, the petitioner would have continued to earn privilege leave or earned leave which is available to Government employees not entitled to get vacation. The privilege leave accumulates only for a period of six months or so and thereafter the leave would lapse. Hence, after a passage of almost 20 years, the exercise of calling upon the petitioner to submit leave reports for the relevant periods need not be undertaken since that process was stayed by this Court during pendency of this petition. Moreover, there is no appearance on behalf of the respondents. There is no affidavit in reply.

Under the circumstances, it would be just and proper to dispose of this petition with a direction to the respondents to treat the question whether the petitioner was or was not entitled to vacation while working on the post of Entomologist as a closed chapter. It is clarified that this Court has not gone into the merits of the controversy between the parties and that the petition is being disposed of in the aforesaid terms in view of the peculiar facts and circumstances of the case pointed out hereinabove.

5. The petition is accordingly disposed of by setting aside the impugned letter dated 27/29-9-80 of the Dean of the Government Medical College, Surat (Annexure "H" to the petition) without expressing any opinion on the contents of the letter dated 24-4-1980 of the Deputy Director of Medical Education, Ahmedabad (Annexure "G" to the petition).

6. The petition is accordingly disposed of. Rule is made absolute in the aforesaid terms with no order as to

costs.

June 14, 1999 (M.S. Shah, J.)

sundar/-